

COMMISSIONERS APPROVAL

CHILCOTT *gc*

THOMPSON *at*

LYONS *dh*

PLETTENBERG (Clerk & Recorder)

Date.....January 23, 2007

Members Present.....Commissioner Greg Chilcott,  
Commissioner Alan Thompson and Commissioner Howard Lyons

Minutes: Glenda Wiles

The Board met to review the request of Jimmy Canton to create a Voluntary Zoning District. Mr. Canton is the sole owner of the property located north of Stevensville near Highway 93 and Shearbrook Lane. Planning Director Karen Hughes was present for this meeting. Karen said this area represents approximately 200 acres. She presented the property description as Exhibit 1 which will be attached to the Resolution if approved. Mr. Canton has not proposed any district regulations. This meeting is only to create the boundaries. Mr. Canton will present the district standards 30 days after the boundary creation.

Public comment was then called for:

Penny Howe is an employee of Mr. Canton. She stated there are currently two gravel pits on this property and Mr. Canton hopes to have a blend of uses on this property. Penny stated she will be working on the district standards, presenting them to the county.

Commissioner Chilcott asked about interim zoning regulations. Karen stated the interim zoning will 'actually sit on top of any voluntary zoning districts; actually being more restrictive and trumping what is there', unless it is repealed.

Commissioner Lyons made a motion to create the district boundaries for the Voluntary Zoning District by Jimmy Canton, as described in Exhibit 1, on Resolution No. 2028. Commissioner Thompson seconded the motion and all voted "aye".

The Board met for the establishment of a Resolution for the Rippling Woods' District Standards. Present at this meeting was Planning Director Karen Hughes. Karen stated the boundaries were created over one year ago. The Planning and Zoning Commission adopted a Resolution for the standards. The Commissioners can now adopt or amend the standards. Planning Staff is recommending the adoption of these standards.

Public comment: Residents Mr. and Mrs. Hendrickson stated they are in support of these standards.

Commissioner Thompson stated the citizens have the ability to control what their neighborhood will look like and the neighbors are in total agreement. Commissioner Thompson made a motion to adopt Resolution No. 2029, which are the Rippling Woods' Voluntary Zoning District Standards. Commissioner Lyons seconded the motion and all voted "aye".

In other business, Commissioner Lyons made a motion to adopt the following Resolutions for budget transfer:

- Resolution No. 2030, which is a budget transfer in the Clerk and Recorder's Office
  - Resolution No. 2031, which is a budget transfer in the Clerk and Recorder's Office
- Commissioner Thompson seconded the motion and all voted "aye".

The Board met for mid-year policy review in regard to the Property and Liability pool (JPIA) and the Workers' Compensation pool (JPA). Present at this meeting was Western States Agent of Record Fred Thomas and staff members, Pat McCarthy and Phil Riley from Western States Insurance and Fred Hanson of MACo. Several County Department Heads were also present for this presentation and discussion.

Fred Thomas presented a handout in regard to the Workers Compensation and Safety Culture program. The handout included the following information: Gross dollar amounts for open claims; Loss Ratio for claims paid; Keeping the injury rate down to keep our premium rate down; Short-term (long-term) incentives for employees; Direct vs. Indirect costs; Committee of County employees.

Fred Hanson stated it is important for all County employees to have access to the Safety Culture Committee in regard to issues of safety. The objective of the Safety Committee is to promote safety in the work place for all employees. When the issues are addressed, the County will see premiums reduced and will have money for other necessities. Fred stated Ravalli County is actually a 'pilot county' for the Safety Culture Program. He stated it is important to remember that the Safety Culture Act is actually legislation and he is appreciative of the fact that Ravalli County is starting this program early.

Pat McCarthy gave a power point presentation on Workers Compensation, which included the following information: OSHA vs. Workers Compensation through the Department of Labor; OSHA is an enforcement program and Workers' Compensation is a compensation program helping to set up various programs to reduce the number of injuries; the Principles of Workers' Compensation, which include the compensation of medical and indemnity payments (disability and death payments); loss ratio; safety management; modification factor for premium payments, which includes a rolling factor for an average of past losses; frequency and severity of the claims (from fatality to serious injuries, minor injuries, near misses and at risk behavior); and underwriting for premium costs. Pat also addressed illnesses, including asbestos, mold and allergy issues; ergonomics (back injuries); and blood-borne pathogens.

Fred Hanson addressed the issues, regarding how an insurance carrier views these things. If a serious injury occurs, they need the report within 24-hours. This assists the investigative portion of the accident and contact for all parties involved. As Ravalli County moves ahead, it is important to implement the MACo Safety Program, as Ravalli County's MOD factor is 1.25, which is too high. The average MOD factor is 1.00. He said any reduction of the MOD factor would mean a voluntary reduction in premium payments. He noted the highest number of injuries is sustained by law enforcement and road department employees.

Fred Thomas addressed the committee make-up of County employees and the number of meetings that should be held to pass along safety information. He also addressed the incentive issue. He stated it is important to address incentives to the employees (quarterly and yearly) as it should make this program successful. Fred Hanson stated if the incentive is monetary, the money must go into the department budget and not to the employee. Fred stated other entities utilize monetary incentives, prizes for department employees, trophy and dinner. It was also noted a safety bulletin is part of the MACo Safety Program.

Fred Thomas suggested Administrative Director Skip Rosenthal meet with the committee members for various suggestions on incentives, safety bulletins, meeting dates/times, and short-term goals to show improvement in the long run.

It was agreed the incentive committee would be: Kevin McConnell, Fred Thomas, David Ohnstad, Skip Rosenthal and Jennifer Ray.

At a later meeting the Board continued the Mid-Year Policy Review with MACo Marketing Director Greg Jackson and Fred Thomas. Specific discussion included the property & liability and Workers' Compensation Pools.

Commissioner Thompson attended a RAC meeting during the evening hours.

January 23, 2007

Commissioner Greg Chilcott  
Commissioner Alan Thompson  
Commissioner Howard Lyons  
Ravalli County Administrative Center  
Hamilton, MT 59840



Dear Commissioners:

As you know, a broad-based project was begun about eighteen months ago to work on a stream protection zone. The Bitterroot Valley Board of Realtors® had two goals for the project. First was to protect the resources that we all value dearly – our streams. The second was to ensure local control of any proposed setbacks. As you may remember, the 2005 legislature saw one bill that very nearly passed. That bill set a one-size-fits-all standard for the entire state. And, no one seems to think that makes sense. A series of meetings were held with interested parties.

Early in the spring, the Bitterroot Valley Board of Realtors® was able to find grant funding that allowed for a science-based mapping of all streams in the valley. At that time, we had an evening meeting where we asked you, the Commissioners, to support the project so that we could proceed with the applications. You gave us that support and we have continued.

At the point that we had draft regulations, we then began a program of outreach with the purpose of soliciting comments from other interested parties. We have had two of those meetings in the past two weeks and quite a few changes to the regulations have been made to address concerns that surfaced during those discussions. Our hydrologist, Clint Brown, has been working with Chris Clancy and they have done a tremendous job of “marrying” two sciences to come up with a stream protection zone that is a unique fit for the streams in our county.

We are now to the point of completing the mapping and finalizing the draft regulations. We’d like to thank Laura Hendrix, Karen Hughes and Shawn Morrell for their attendance and input at the last two work group meetings.

We feel that this is a win-win-win for the county. The county taxpayers don’t have to pay for the mapping. The maps provide a science-based, predictable zone that protects the resource and maintains local control. Lastly, the mapping should mean less money spent by the county to administer and/or enforce the zone. It provides an objective, defensible stream protection zone and process.

We apologize for missing this meeting. The Montana Association of Realtors® meetings are in Helena this week. Every Realtor® who has worked on this project and has the authority to speak for the Board, had prior commitments to attend the MAR meetings.

Several of those REALTORS® will be meeting with Legislators and attending or testifying at committee hearings.

The Board of Realtors® would like to continue and see this project through to completion. We are at a crossroads with the funding. We need to know if you are going to move forward in adopting the regulations and the map as the implementation tool. Approximately \$50,000.00 has been spent to this point. We will be unable to receive funds to complete the mapping if the regulations are not adopted. We would urge the Commissioners to remind those who want to take more time to develop the regulations that regulations are constantly being amended and changed. But, this need to start the process exists. We urge you to move forward to meet two goals. The first goal is to protect the resource and the best way is to start now. The second goal is to preserve local control and since at least one one-size-fits-all bill has been brought forward in this legislative session, the best way to achieve the goal is to start now.

Thank you for your time.

Sincerely,

Bitterroot Valley Board of Realtors®

January 23, 2007

Commissioner Greg Chilcott  
Commissioner Alan Thompson  
Commissioner Howard Lyons  
Ravalli County Administrative Center  
Hamilton, MT 59840

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Thank you for your time.

Sincerely,

Bitterroot Valley Board of Realtors®

## Karen Hughes

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**From:** Teri Polumsky [Teri@byowner-mt.com]  
**Sent:** Tuesday, January 23, 2007 7:13 PM  
**To:** Jay Estus; Dorene Sain; Phil Taylor; Will McDowell; Tom Parker; Steve Powell; Shaun Morrell; Sharon Dedmon; Marshall Bloom; Laura Hendrix; Kathleen Driscoll; Karen Hughes; JR Iman; John Ormiston; Joel Gallob; Jack Mauer; Ira T. Holt; Greg Lemon; Fred Weisbecker; Eddie Olwell; Ed Snook; Earl Little; Doug Nation; David Dedmon; Dan Huls; Curt McChesney; Chris Clancy; Bill Bean; Amy Sacry; Alec Sutherland; Al Pernichele  
**Cc:** Alan Thompson; Greg Chilcott; Howard Lyons; Pat Saffel; Clint Brown; Rick Laible; Ron Stoker; Dixie Dies  
**Subject:** stream protection zone

I wanted to touch base with all of you again and thank you for your time at the last two meetings. I think the dialogue was very valuable. I hope to have a revised draft for you the first part of next week. I know that Clint and Chris have been out in the field again and are having another meeting. Many of the comments and concerns discussed have been addressed and changed in the new draft.

I'll have the document to you as soon as I can!

Thanks again.

Teri Polumsky  
Broker/Owner  
By Owner/Polumsky Properties  
REALTOR of the Year 2004  
REALTOR of the Year 2001  
Real Estate Instructor  
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## **STREAMSIDE PROTECTION ZONE – WORK GROUP MEETING NOTES JANUARY 12, 2006 – BITTERROOT PUBLIC LIBRARY**

ATTENDING: Clint Brown, Ira Holt, Laura Hendrix, Karen Hughes, Kathleen Driscoll, Chris Clancy, Shaun Morrell, Doug Nation, Will McDowell, Curt McChesney, Greg Lemon, Amy Sacry, Dave Dedmon, Sharon Dedmon, Joel Gallob, Al Pernichele, Teri Polumsky. Dixie Dies, facilitator

### **Concerns/Questions:**

#### **TITLE**

Should Regulations instead of Ordinance

#### **SECTION 1**

1. 1-A – Define Best Management Practices – add to definitions

#### **SECTION 2**

1. Add definition of Buffer
2. Add definition of Ephemeral
3. Add retaining walls to definition of “Structure”

#### **SECTIONS 3 and 4**

1. Review applicable lands (i.e. platted divisions that have no improvements at this point). QUESTION: If all land already platted is exempted, that would take a huge number of acres out of the SPZ. For example, all old orchard tracts.
2. Need to clearly state what is “grandfathered” – i.e. existing structures
3. Perhaps add definitions of preliminary plat and plat
4. Section needs to more clearly define applicable parcels
5. Timeframe for map
6. Public review of map
7. Can ordinance/regulations be adopted without map?
8. Need more time
9. Bills coming forward during the session may allow counties to adopt local control measures
10. Some are not clear about confined and unconfined streams (drawings from Clint and Chris helped – thanks!)
11. What is the width of the middle zone?
12. A drawing or chart defining zones would be helpful
13. Some in group want inclusion of Bitterroot River, East and West Forks because floodplain regs are not adequate
14. Will buffer widths protect structures and stream?
15. Total Buffer Width unclear
16. Any possibility of going from 3 zones to 2 zones?

## **SECTION 5**

1. No mowing or clearing – how does it get enforced?

## **SECTION 6**

1. B-4, B-5, B-6 add applicable permits from the Conservation District
2. D-3 needs clarification of “small concrete slabs built to accommodate dwelling structures.
3. C-2 suggest maximum width be listed for recreational trails.
4. E – concern that yards are too close – would like 50’ from edge of streamside zone
5. Perhaps add definition of agriculture to definitions (would clarify B-9)
6. Planning Director is not comfortable with “discretion of the Planning Director” – would like some parameters
7. Question about fencing i.e. agricultural vs. decorative
8. Interaction with other regs

**STREAMSIDE PROTECTION ZONE – WORK GROUP MEETING NOTES  
JANUARY 16, 2006 – BITTERROOT PUBLIC LIBRARY**

ATTENDING: Travis Martinez, Michael Howell, Ira Holt, Earl Little, Kathleen Driscoll, Karen Hughes, Laura Hendrix, Chris Clancy, JR Iman, Phil Taylor, Dorene Sain, Jay Estus, Teri Polumsky. Dixie Dies, facilitator

**Concerns/Questions:**

**SECTION 8**

1. County doesn't have a Unified Development Code – need to change verbiage

**SECTION 9**

1. Does stream corridor need to be defined? (it will be defined by the mapping)
2. Is there an Ag Resource Plan (JR Iman addressed this) if you have a history of cropping there is a plan – clarification is needed
3. A concern was raised about overlapping regulations resulting in more red tape for landowners
4. Question: If you have an approved DEQ plan, would that satisfy the requirement?

**SECTION 10**

1. Would proposed process apply if development doesn't fall within the stream protection zone?
2. Any reference to unified development code needs to be changed to reflect the process in place in Ravalli County

**SECTION 11**

1. What constitutes adverse impacts?
2. Need to develop criteria for how conditions can be applied and what conditions can be applied

**SECTION 12**

1. item A-1 – more authority needed for the county to tie to the 100 year floodplain. Section needs clarification
2. Item A-2 – Identify which floodplain (i.e. 100 year)
3. Are existing structures exempted ( yes)
4. Need criteria established for county to reduce stream setback
5. Item b-1 – what is definition of “sensitivity” and “intensity”
6. Should decision be based on economics?
7. Concern was raised about the process being too costly for landowners

### **SECTION 13**

1. Is a variance process different than a deviation?
2. Define unnecessary hardship

### **SECTION 14**

1. The appeals process appears too costly for landowners.
2. And the appeal process be streamlined?
3. A comment was made that if the mapping is done properly, it should eliminate the need for an appeal (or at least reduce the number)
4. Are variance and appeal the same thing?
5. What about takings?
6. Landowners could apply for open space funding.
7. Landowner may not be able to change use of land because of new regulations
8. Appeals and Variances – Items b 1,2,3 and 4 should be moved under variances
9. Need to simplify section

### **SECTION 16**

1. Capitalize Stream Corridor in the First Sentence

### **NOTES:**

There was a lot of discussion about whether the regulations could be adopted without the map being available

Explanation of total buffer width – measured from stream side

Discussion about width of zone and differences

*From Jay Estus*

### ***HISTORICAL PERSPECTIVE***

In 1889 the Irish engineer Robert Manning introduced an empirical equation which relates the mean flow velocity to channel roughness, hydraulic radius and bed slope. Using the equation, one can calculate the cross-sectional average velocity of flow in open channels:  $V = 1.486/n * R^{0.67} * S^{0.5}$

where  $V$  = cross-sectional average velocity

$R$  = hydraulic radius (cross sectional area/wetted perimeter)

$S$  = Slope of stream

$n$  = Manning's roughness coefficient.

Applying  $Q=AV$ , this velocity is then used to determine the cross sectional area affected by any given quantity of flow (e.g., a 100 year event).

The application of Manning's equation requires the use of a roughness coefficient "n" in the calculation. These coefficients have been established for different stream-bank conditions, as well as for many other materials since this relationship is still one of the most popular methods in use today for free-surface flow in many different engineering disciplines involving hydraulic transfer.

Barns (1967) and Hicks and Mason (1991) sought to improve the consistency in velocity estimates by correlating stream data with photographs to provide a visual reference to assist in selecting "n" values. This work categorized a wide diversity of 128 stream types. Building upon this work, Rosgen went on to develop a stream classification scheme, believing that Manning's coefficient could be determined more consistently based upon the classification of stream, rather than upon the engineering definitions for the variable "n".

### ***ROSGEN'S MODEL – AN OVERVIEW***

Rosgen's stream classification protocol involves:

LEVEL 1) geomorphic characterization (using topographic and landform maps, and aerial photography).

LEVEL 2) morphological description involving careful analysis of stream particle size, stream shape, woody debris, shading, meander wavelength, sinuosity, etc, in addition to the gradient and cross-sectional measurements typical of any hydraulic analysis.

LEVEL 3) stream "state" or condition analysis (e.g., riparian vegetation, sediment supply, flow regime, debris occurrence, depositional features, channel stability, bank erodibility, etc.), and

LEVEL 4) validation, which is the level at which measurements are taken to verify process relationships inferred from preceding analyses (e.g., correlate bed-load versus discharge by stream type to determine sediment transport relationships, calculate hydraulic geometry from gaging station data, etc.)

Although great erosion and enlargement of steep, incised channels may occur during extreme flood events, it is the modest flow regimes which often transport the greatest quantity of sediment material over time, due to the higher frequency of occurrence for such events (Wolman and Miller, 1960). Recognizing this, Rosgen utilizes what he refers to as a "bankfull discharge" in his model, which is based upon the flow typical of a 1 or 2 year event. Flow data corresponding to 1 or 2 year events are obtained from local gage stations. Using this data, the Rosgen model then utilizes Manning's equation to predict the velocity of water and the resulting "bankfull cross-sectional area" in response to a defined flow. This "bankfull" volume of water then reveals the capacity of physical processes to aid in predicting stream response.

***HOW DOES THIS RELATE TO THE PROPOSED SETBACK ORDINANCE? – An opinion.***

The objective of Rosgen's work is to provide a tool that can be used to predict stream processes as an aid in assessing a river's condition, and for planning remediation or reclamation of river channels that have been damaged due to misguided construction or even natural events. It is not designed as a tool for defining stream setbacks. Using six pages to introduce the Rosgen model in the Stream Setback Ordinance implies that the prescribed stream setbacks shown on the tables for "confined" and "unconfined" drainages are based upon science or engineering represented in Rosgen's model. I find absolutely no traceability between the published work of Dave Rosgen found in "Applied River Morphology", and his more recent work) found on the [epa.gov/WARSSS](http://epa.gov/WARSSS) website) to these tables and the setback values published. If there is no traceability other than to say that the tables apply to certain types of Rosgen-classified streams, then the Rosgen model should not be implicated as the source from which these values have been determined.

Furthermore, the proposed setbacks found on the tables for streams less than 15 feet wide exceed the predicted geomorphic belt-width. If indeed, the "multiplier" has any scientific or engineering basis, then the setback should not exceed the geomorphic zone of influence (unless of course the limits of the 100 year floodplain go beyond the geomorphic zone). Seeing a buffer width of 150' on a stream 1 ft wide, with a predicted geomorphic zone 8' wide, indicates to me a clear violation of the separation of church and state, and a gross encroachment upon private property rights. These setbacks are clearly not established upon science or engineering principles and I believe the very basis upon which these "multipliers" have been derived should come under peer review to determine if they are relevant to the geography of the Bitterroot Valley.

Finally, one must realize that streams are constantly changing, and just like the floodplain maps, which over time become inaccurate due to channel events, the Rosgen stream maps will also become obsolete and require ongoing maintenance. In-fact, Rosgen suggests re-evaluating the stream every 2-3 years.

Accept that the 100 year floodplain already provides stream protection by ensuring that new construction remains outside this boundary. Also, recognize that the 100 year floodplain will ultimately determine the outer extent of the setback, even if the prescribed

buffer width as defined on these tables yields a lesser value. Furthermore, realize that the Rosgen model utilizes exactly the same Manning equations to determine the cross-sectional flow as surveyor's and engineers use to predict the extents of the 100 year floodplain. Therefore, even if Rosgen's model was used to predict a 100 year event, the results would be identical.

### ***BEATING A DEAD HORSE***

Section 4. As I understand, the development of a Stream Protection Zone map will be based upon field analysis and mapping of wetland and riparian zones. It does not involve delineation the 100 year flood plain which will supercede these setback requirements.

Section 4 B. I have found no traceability between the Stream Corridor as defined by the "Streamside Zone, Middle Zone, and Outer Zone" and the Rosgen model. There needs to be engineering or scientific traceability to justify their existence (Perhaps these terms have been extracted from riparian studies conducted by the BLM or USDA Forest Service).

Section 5, - Prohibit the use of herbicides and pesticides in the streamside zone.

Section 6, (7) – Wastewater facilities are prohibited by DEQ within 100 feet of a stream or ditch, and out of the floodplain. That keeps them out of the Streamside Zone, and out of the Middle Zone on all but the widest channels.

Section 6, (7) - Where is the referenced section entitled "Resource Protection and Mitigation Measures"?

Section 6 C. (4) Again in most cases DEQ regulations will prohibit wastewater facilities within the Middle Zone (i.e., 100 ft min).

Section 6 E. Another 10' setback has been introduced. What is the purpose? The outer zone is already a 20' setback from the middle zone. Also, the implication is that unless you are a single-family residential dwelling, you may not have a yard in the middle or outer zone.

Section 6 F. In-stream activities are already sufficiently regulated. Adding red tape to the system by involving the Corp of Engineers, the EPA, and the Dept. of Health & Environment (?) is a disservice to the irrigator who needs timely access to the stream channel for maintenance and the oversight responsibility is probably unwanted by these organizations. Suffice to say that in-stream activities fall under existing regulation.

Section 7 A. The greatest threat to surface water quality in Ravalli County is not the development of homes which this ordinance is designed to restrict. The greatest threat comes from domestic livestock. Why then is agriculture expressly permitted in all zones of the stream corridor? Horses and cows need to be fenced out of the streamside, and away from any conveyance that returns to state water. In his book "Applied River

Morphology" Rosgen offers some good guidelines for grazing management along different stream types.

Section 7 A con't: I'm not sure why the discussion on when activities cease to be existing. Perhaps the authors intended to say that after agricultural activities cease they cannot be resumed.

Section 7 D. If a landowner desires to add onto their existing dwelling, they should be able to do so as long as the addition does not encroach into the 100 year flood-plain.

No comment beyond section 7 at this time.



Ravalli

County  
MONTANA

## RAVALLI COUNTY ATTORNEY

*George H. Corn, County Attorney*  
*T. Geoffrey Mahar, Chief Deputy*  
*John Bell, Deputy*  
*Karen Mahar, Deputy*  
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Fax (406) 375-6731

### MEMO

**TO:** Karen Hughes, Planning Department

**CC:** Ravalli County Commissioners

**DATE:** January 24, 2007

**FROM:** George Corn

**RE:** Proposed Adoption of Stream Setback Regulations

Dear Karen:

You contacted our office yesterday afternoon requesting some input on the County Commissioners meeting this morning at 9:00 a.m. to consider adoption of a proposed Stream Setback Ordinance. As you know, I am out of town until Thursday, but have spoken with Karen Mahar via telephone regarding your questions. Because our office is presently short-staffed and was only notified of this meeting the afternoon before, we will be unable to personally attend. However, this memo should help address concerns that may be discussed.

Your question was whether the proposed Stream Setback Ordinance could or should be adopted without the Ravalli County Stream Protection Zone map. Although this map is referenced throughout the substantive provisions of the proposed ordinance, it is my understanding that this map has not yet been developed and is scheduled to be completed sometime this summer.

After review of the proposed ordinance, I have determined that the proposed ordinance will not be enforceable if adopted without the referenced map. Per the language of the ordinance, the map will be used to:

- 1) identify Stream Segments and the Stream Corridor (p. 6-7);
- 2) implement stream protection (p. 8);
- 3) determine whether development applications are consistent with the defined Stream Corridor (p. 14); and
- 4) determine whether boundaries of the zone should be modified (p. 15).

These uses for the map in relation to the ordinance are substantive; that is, the regulation of streams setbacks is meaningless if applicants cannot determine where the appropriate zones are actually located.

As you are aware, the establishment of stream setback regulations are a form of zoning. Maps are needed for valid zoning when the regulations divide land into separate areas within which it is permissible or not permissible to erect and maintain certain types of structures. Doull v. Wohlschlager (1963), 141 Mont. 354, 363, 77 P.2d 758, 763. Such maps provide notice where the regulations may vary from property to property and how they are applied. Id.

Although zoning regulations and maps may be formulated together, you cannot adopt regulations according to a zoning map that does not exist. *See, e.g., Yurczyk v. Yellowstone County*, 2004 MT 3, ¶18-19. Zoning regulations must at least substantially comply with laws for forming districts to be valid. Id., ¶23. Any regulation adopted without a map in this instance would be void for vagueness on its face, as it fails to give a person of ordinary intelligence fair notice of whether the statute does or does not permit his contemplated conduct. State v. Martel (1995), 273 Mont. 143, 150, 902 P.2d 14, 18.

Finally, I understand this ordinance has been worked on since last March by consultants hired by the Board of Realtors. I further understand that it was only unveiled to the public at the end of last week. Accordingly, the complexity of the subject and the short time this has been available to the public does not provide adequate notice for review and time for insightful public comment. It is impossible for the public to be adequately informed or comment meaningfully on a regulation that is incomplete, thus also raising issues regarding compliance with public meeting requirements.

It is not legally possible to finalize or adopt the stream setback regulations as they exist at this time. Please contact me if you have any additional questions.

Comm.

Save the Bitterroot Conservation Coalition (SBCC)  
63 Sugar Mountain Road, Apt. A  
Hamilton, MT 59840  
Cell 239-6791

County Commissioners  
Ravalli County Administrative Offices  
215 South 3<sup>rd</sup> Street  
Hamilton, MT 59840

Re Stream Setbacks

January 24, 2006

**Please record these as official comments from SBCC concerning the Board of Realtors draft, stream setback regulations.**

We all can agree that water is the lifeblood of our valley and that our economic future depends to a large degree on protecting that essential resource. Just like veins and arteries in the human body, our thousands of miles of streams in the Bitterroot Valley eventually reach directly to the heart of our valley, the Bitterroot River. Even smaller ephemeral and intermittent streams play a vital role in maintaining healthy riparian conditions and stable watersheds, but can often times not receive adequate recognition and protection simply because of the fact that they are dry for portions of the year. Out of all habitat conditions for wildlife, riparian areas provide up to 80% of the potential habitat in any given area.

We can think of no other landform or ecosystem type in the Bitterroot Valley that is more important to this community than this immense stream system. Because of the historic lack of zoning and regulation of human activities in these areas, serious and un-quantified impacts from our activities have had serious impacts on our stream system. This zoning effort provides the best opportunity in the history of our presence in this valley to recognize the importance of protecting this resource and to apply essential protections.

The unprecedented amount of land disturbance that we are now seeing from road building, house construction, "gravel-pitting", recreation and grazing requires that we approach our stream systems with a much different approach than before. We therefore support the most restrictive zoning restrictions allowed by Montana State law when considering stream setback requirements. We are concerned about a number of the permitted activities in the Streamside Zone, listed as items 7, 8 and 9 under REGULATED USES, STRUCTURES AND ACTIVITIES.

**Item 7: Installation of water and wastewater facilities** – we view this as a very high risk activity in the primary stream zone and believe that **any proposals receive very strict review by a small team of professional biologists, hydrologists and others trained in stream biology and management and that the permission to undertake these**



activities not be relegated to a potentially, unqualified planning professional. Stream biology is a very complex science and should not be left untrained employees. The risk of catastrophe from a wastewater discharge is too important to be taken lightly.

**Item 8: Public Infrastructure – just exactly what does/can this entail?.** The term “public infrastructure” seems very nebulous to us and a more well-defined list of permitted activities needs to be developed. Left as is, this is an opening for any number of large and potentially damaging activities that could/would be detrimental to water quality and riparian health and vigor.

**Item 9: Agricultural uses necessary for active agricultural operations.....again,** this is very loosely defined and a list of more specific practices with tolerance limits needs to be firmly established so that it is not left so open to personal interpretation. *Grazing of cattle in riparian areas can have devastating effects on aquatic vegetation and the ability of the stream channel to absorb large storm events. In Oregon, where I worked as a professional land-use manager, I observed riparian areas that had such complete soil erosion from grazing, that the stream-channel had been taken down to bedrock, having lost 50 thousand years of soil development. Grazing in Streamside Zones needs to be highly regulated!*

I took the liberty of reviewing the records from a meeting held on this subject in May 2006 and noted comments from Terry Polumsky and other real estate interests (attached). It concerns us that the entire scope of this stream setback development process is to build the minimum standards necessary to prevent oversight from the State of Montana, which envisions much stricter regulations that I have found in this draft document. This kind of mindset creates an atmosphere of mistrust in the conservation community and “raises eyebrows” about the sincerity of this effort.

**It is SBCC’s official position that these draft regulations are inadequate to insure the safety and integrity of the valley’s watershed and should be re-examined with professional biologist(s) from the State of Montana, and a written, unbiased and unpressured critique be prepared and presented to all interested parties, including our organization.**

We appreciate the effort that the Board of Realtors has put into this effort but there is no way that their credentials in the fields of biology and other sciences qualify them to make final decisions of such importance. This process needs a complete overhaul by a team of trained and hopefully, neutral professionals.

Sincerely,

Chris A. Linkenhoker, Treasurer



(2) Board Decision

The vote was called; the members voted (6-0) to approve the Subdivision. (See Attachment H, Mountain View Orchards Block 12, Lot B, AP Vote Sheet)

8. **Close Public Hearing**

9. **Special Presentations about Streamside Setbacks**

**Clint Brown** said he was asked by the Board of Realtors to look at the initial thoughts of the streamside working group and come up with a methodology for stream typing.

**Frankie** said the working group includes herself, Chris Clancy, Rick Liable, Trout Unlimited, Montana Fish & Wildlife, The Audubon Society, Steve Powell, Commissioner Chilcott, members of the Planning Board, Susan Key, and Barbara Kitchens. She noted that the Board of Realtors began the planning process and then Susan Key from the Bitter Root Water Forum started coordinating the meetings.

**Susan Key** said that at the public forum last April, Barbara Kitchens had asked for a mechanism whereby a setback ordinance could be put into place that was acceptable to residents of the valley and the Commissioners so it would not need many changes. Susan volunteered the Bitter Root Water Forum as a mechanism with broad stakeholder representation.

**Teri Polumsky** said that during the last legislative session, a bill almost passed for mandatory 300-foot setbacks on streams. She said that only counties with a program in place by the end of 2006 will be exempt from the proposed law, so timing is crucial.

**Clint Brown** gave a Power Point presentation about Stream Protection Zones (SPZ). His methodology included the Rosgen stream classification, which streams would be included, and the general multipliers to determine reasonable stream setbacks. He also said that when streams transition to different types, the transition should be smooth.

**Chip** asked how the methodology would be applied. He noted high costs for hiring engineers to design roads and then to have the plans reviewed by another engineer. He asked what this process would cost the developer.

**Clint** said his plan is to make a map and deliver it to the County so that there will not be interpretation issues.

**JR** said the majority of discussion at the setback meetings has been about whose view to take. He noted that developers, landowners, and conservation groups all have different ideas about the setbacks. He said the focus at this time is to make a base map with scientifically defensible material.

**Frankie** said that the County would not be able to control land already subdivided, but they could control where septic approvals were issued.

**Chip** said it should not be put onto the back of subdivision developers.